



The State of New Hampshire  
*Department of Environmental Services*



Michael P. Nolin  
Commissioner

January 26, 2006

The Honorable David P. Currier, Chairman  
Resources, Recreation, and Development Committee  
Room 305, LOB  
Concord, NH 03301

**RE: House Bill 1395, Relative to Public Drinking Water Protection**

Dear Representative Currier:

Thank you for the opportunity to comment on HB 1395 which would require protection of all surface water sources of public water supply and that the lands around these sources acquired by public utility water companies be held in trust for ratepayers. The Department supports the intent of this bill and believes that the protection of our surface water sources of public drinking water is critical to the protection of public health and the economy. We provide the following information for the committee's consideration and offer to work with the sponsors and other key stakeholders toward achieving this goal.

**Status Surface Water Sources of Public Drinking Water:** Currently, 54 surface waters in NH are used as sources of public drinking water and 40% of NH's population depends on these sources. Approximately half of these sources are protected through administrative rules under a provision in RSA 485:24, land ownership or control, local zoning provisions, or some combination of these techniques. These rules vary widely in form and substance based in part on surface water supply watershed characteristics, local preferences, and historical watershed protection practices.

**Importance of Protecting Surface Water Sources of Public Drinking Water:** Historically, the trend in federal drinking water regulation has been for increasingly stringent health-based water quality standards for an ever-growing list of contaminants. Today, the list of "emerging contaminants" potentially of concern for public water suppliers include pharmaceuticals, endocrine disruptors, as well as pathogens such as Norwalk virus, calicivirus, Cyclospora, microsporidia, toxins from certain algae and certain disinfection-resistant bacteria. Making matters more challenging, the disinfection of surface waters with chlorine compounds creates byproducts which themselves pose a health risk. Therefore, DES, the U.S. Environmental Protection Agency, and the U.S. water supply industry as a whole do not consider treatment alone to be sufficient to ensure safe drinking water. The preferred approach is the "multi-barrier approach" which includes a focus on the protection of the sources of the drinking water as a key frontline barrier to contamination. In addition the American Water Works Association, the national association of water works professionals, has concluded based on its research that keeping watershed land in a natural state avoids the need for more extensive and costly treatment. Because almost any development in a watershed introduces a potential risk



to water quality, in an ideal world the watersheds for our surface water sources of drinking water would be undeveloped. In the real world, source protection is a balancing act involving a variety of interests and objectives. The approach generally advocated to balance water quality concerns with private property rights is to focus on the protection of lands immediately adjacent to surface water sources of drinking water. This same approach is taken with the NH Shoreland Protection Act (RSA 483-B). However, many water supply sources and their tributaries are not protected under RSA 483-B because they do not meet the laws applicability criteria.

**Comments on HB 1395:** There is a clear need to improve protection of our surface water sources of public water supply. Under RSA 485, the NH Safe Drinking Water Act, the Department can choose or be petitioned to adopt rules "as it deems best to protect the water or ice supply against any dangerous contamination". Under this statute municipalities become "agents" of the state for monitoring and enforcement of the rules. To date, DES has adopted such rules only where there has been an interest on the part of the water supplier. There is currently no legislative direction on which water supplies should be protected and what protection measures should be employed. HB 1395 is an attempt to provide this guidance by applying the criteria developed for local rule development contained in DES's *Model Rule for the Protection of Water Supply Sources*. This guidance and the legislation both recognize that each surface water source is unique and that the requirements that make sense in one location may not work in another. However, we have some specific concerns with the placement of DES guidance in statute:

1. Any statewide requirements for buffers on surface waters should be consistent with the N.H. Shoreland Protection Act, which is currently under extensive study by the Shoreland Protection Commission. We suggest that alternative setbacks for public drinking water supplies be worked out with this Commission to maintain both clarity and consistency. In addition, although technically the differing width of buffers for tributaries and sources makes sense, a single buffer width for both would be much easier to implement. For both the regulator and the land owner, it is important that restrictions be consistent with existing law and easily understood.
2. There is no provision for municipalities to become "agents" of the state as currently exists in RSA 485. We have found that enabling delegation authority for watershed rule enforcement to local entities such as public water suppliers has been an effective approach. Expecting DES to take on monitoring and enforcement responsibilities for all surface water sources of drinking water is unrealistic and may not achieve the objective of protecting our surface water sources of drinking water.
3. The time required to establish water supply source specific requirements can vary significantly from source to source. It is important that all stakeholders be brought together and all local concerns and circumstances be considered. Consequently, DES recommends that the effective date be extended to provide several years to work with each water supplier

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to identify appropriate rules for their source of public drinking water, should HB 1395 become law.

Finally, DES is uncertain of the legality or effect of the requirement in HB 1395 that land acquired by public utilities to protect a source of drinking water be held in trust as property of the rate payers. We suggest that this concept be discussed at length with the Public Utilities Commission and the Department of Justice before placement into law.

In summary, DES strongly supports the protection of our surface water sources of public drinking water, the majority of which have no or minimal protection in place. We would be happy to work with the sponsors and other key stakeholders such as the N. H. Water Works Association and the N.H. Municipal Association to achieve this goal by crafting an approach which is consistent with the Comprehensive Shoreline Protection Act, allows for local circumstances, and is realistically achievable by municipal water systems.

Thank you again for the opportunity to comment on this legislation. If you have any questions or need additional information, please do not hesitate to call Sarah Pillsbury at 271-1168 or me at 271-3449.

Sincerely,

  
for Michael P. Nolin  
Commissioner

cc: Representative Martin  
Representative Crane  
Representative Balboni  
Representative Spang  
Senator Hall  
Senator Johnson